

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

Rodaciano Rodriguez
Hilda Rodriguez
Juan Montenegro,
Plaintiffs,

v.

C.A. 12-210

Wells Fargo Bank, NA alias
and GSAA Home Equity Trust 2006-12,
alias and John Doe, alias
Defendants.

DEFENDANT WELLS FARGO BANK, N.A.'S
RESPONSE TO ORDER TO SHOW CAUSE

The Defendant, Wells Fargo Bank, N.A. (“Wells Fargo”), hereby responds to the Court’s Order to Show Cause as to why the Special Master should not return the Use and Occupancy fees to the Plaintiffs, Rodaciano Rodriguez, Hilda Rodriguez, and Juan Montenegro (“Plaintiffs”), as follows:

Throughout the pendency of this action, Plaintiffs have benefited from the use of the property at issue without making any payments on their mortgage loan. Conversely, Wells Fargo has been harmed as it continues to be deprived of monthly principal and interest payments, as well as its collateral, as Wells Fargo navigated the Special Master process and engaged in settlement discussions in good faith. Further, Wells Fargo has continued to incur fees and costs associated with the Property, including amounts advanced for taxes and insurance on Plaintiffs’ behalf. The Special Master required Plaintiffs to make monthly use and occupancy payments, which were intended to partially address this inequality. Use and occupancy fees are “damages for defendant’s failure to relinquish possession of the property.” *See Dellagrotta v. Dellagrotta*,

873 A.2d 101, 112 (R.I. 2005). If the use and occupancy payments are returned to Plaintiffs, the protections provided to Wells Fargo would be rendered entirely illusory. Plaintiffs will have obtained free use of the property, while Wells Fargo will be unable to recover any principal or interest payments or escrow advancements. Such a result would be neither fair nor equitable.

Accordingly, Wells Fargo respectfully requests that the Court enter an order instructing the Special Master to disburse the full amount of the use and occupancy payments to Wells Fargo, through its counsel, Attorney Shanna M. Boughton.

Wells Fargo Bank, N.A.,
By its Attorneys,

/s/ Shanna M. Boughton
Bethany M. Whitmarsh, Esq. (#7318)
Shanna M. Boughton, Esq. (#8283)
LeClairRyan
One International Place, Eleventh Floor
Boston, MA 02110
bethany.whitmarsh@leclairryan.com
shanna.boughton@leclairryan.com
Telephone: 617-502-8200
Facsimile: 617-502-8201

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2014 the foregoing document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electric Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Shanna M. Boughton
Shanna M. Boughton